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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCO ANTONIO SALAZAR,

Defendant - Appellant.

No. 07-30313

D.C. No. CR-07-02024-FVS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, District Judge, Presiding

Submitted June 18, 2008^{**}

Before: REINHARDT, LEAVY, and W. FLETCHER, Circuit Judges.

Marco Antonio Salazar appeals from the 46-month sentence imposed following his guilty-plea conviction for illegal reentry, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Salazar contends that his sentence violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because the temporal relationship between his prior conviction and removal was not alleged in the indictment. Because the indictment alleged the date of his removal, and because the district court properly found that the removal occurred after his prior conviction, this contention fails. *See United States v. Calderon-Segura*, 512 F.3d 1104, 1111 (9th Cir. 2008); *United States v. Salazar-Lopez*, 506 F.3d 748, 752 (9th Cir. 2007).

Salazar next contends that his sentence is unreasonable because the district court did not depart downward pursuant to U.S.S.G. § 5K2.13, and that it is otherwise unreasonable in light of his unique circumstances. The record indicates that the district court thoroughly considered Salazar's personal circumstances and that the resulting, below-guidelines sentence is substantively reasonable. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc); *see also United States v. Mohamed*, 459 F.3d 979 (9th Cir. 2006).

Finally, as Salazar concedes, his contention that his constitutional rights were violated when a prior conviction was used to increase the statutory maximum sentence is foreclosed. *See United States v. Bolanos-Hernandez*, 492 F.3d 1140, 1148 (9th Cir. 2007).

AFFIRMED.